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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/987,404	11/14/2001	Takeshi Kamio	SH-0027US	7029
21254 7590 07/09/2008 MCGINN INTELLECTUAL PROPERTY LAW GROUP, PLLC 8321 OLD COURTHOUSE ROAD SUITE 200 VIENNA, VA 22182-3817				
			EXAMINER HOFFMANN, JOHN M	
			ART UNIT 1791	PAPER NUMBER
			NOTIFICATION DATE 07/09/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
09987404	11/14/01	KAMIO ET AL.	SH-0027US

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VIENNA, VA 22182-3817

## EXAMINER

John Hoffmann

ART UNIT	PAPER
1791	20080703

DATE MAILED:

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**Commissioner for Patents**

The reply brief filed on 6/30/2008 has not been considered because it is not in compliance with 37 CFR 41.41(a). The reply brief included a new or non-admitted amendment or new or non-admitted affidavit or other evidence."

On page 3 of the reply brief – in Table 3 - there is an attempt to rely on proportions of prior art drawings. However, until now, Examiner was not permitted to use such as evidence. As stated as a section heading in MPEP 2125:

**"PROPORTIONS OF FEATURES IN A DRAWING  
ARE NOT EVIDENCE OF ACTUAL PROPORTIONS  
WHEN DRAWINGS ARE NOT TO SCALE"**

But, by virtue of appellant's arguments, the can have the effect of evidence.

From MPEP 2145: Consideration of Applicant's  
Rebuttal Arguments

**I. ARGUMENT DOES NOT REPLACE  
EVIDENCE WHERE EVIDENCE IS NECESSARY**

Attorney argument is not evidence unless it is an admission, in which case, an examiner may use the admission in making a rejection. See MPEP § 2129 and § 2144.03 for a discussion of admissions as prior art.

Presently, Examiner is prevented from actually using this new admission/evidence in a new rejection- 37 CFR 41.43(a) (2). Thus it is deemed that the reply brief includes new or non-admitted evidence.

